SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

KING COUNTY and KING COUNTY PROSECUTING ATTORNEY DANIEL T. SATTERBERG, Petitioner, and ALLAN W. PARMELEE, Respondent	Case No.: 07-2-39332-3SEA MEMORANDUM OPINION

This matter comes before the court on the petition of King County and its elected prosecuting attorney, Daniel Satterberg, for orders permanently enjoining the petitioners from disclosing documents to the respondent, Allan Parmelee, that contain personal information pertaining to employees of the Prosecuting Attorney's Office (PAO), and permanently enjoining the respondent from submitting any future public records requests to petitioners without leave of court.[1]

[1] The proposed order submitted to this court on January 25, 2008, seeks an injunction that would permanently restrain the petitioners from disclosing documents responsive to certain specific public records requests, in addition to the general injunction regarding personal information. The proposed order also adds criteria for the court's granting leave to respondent to submit a request, namely, that he must make a substantial showing that release of the information or documents requested would serve the public interest and would not cause harm to any individuals or the petitioners.

The respondent opposes the petitioners' requests.[2]

Respondent is an inmate in the custody of the Washington State Department of Corrections (DOC), having received an exceptional sentence after a conviction for arson in a King County Superior Court. It is uncontroverted that for a number of years Mr. Parmelee has made numerous requests for information under the former Public Disclosure Act and its recodified successor law, the Public Records Act (PRA). According to the petitioners, respondent submitted 223 separate requests to DOC between May 9, 2000, and June 7, 2007. Petitioners have also set forth requests made by respondent to the PAO regarding their employees and regarding judicial officers.

Petitioners have submitted numerous declarations and other materials regarding threats by respondent that were, at best, thinly veiled. They also submitted copies of voluminous public records requests from him. Petitioners state that respondent has grossly abused the system, has threatened numerous government employees (including prosecutors, law enforcement officers, and corrections officers), and has attempted to intimidate any person or group against whom he has a grudge. They allege that his public records requests serve that purpose and that purpose only. The court is also aware that the arsons for which respondent was convicted involved lawyers against whom respondent may have had personal animus. Petitioners have provided a number of documents indicating that courts have accepted these allegations as findings in making rulings limiting respondent's right to receive certain documents in response to records requests. Because respondent has not submitted a properly sworn statement, the factual assertions of petitioners' declarations are accepted as verities. The opinions asserted by petitioners and others, however, do not carry the same weight (for example, those dealing with respondent's motivations).

Respondent denies these allegations, stating instead that he is motivated by a belief that he has been wrongly convicted and that his actions, though possibly disturbing, are intended to cast light upon a system of which he disapproves.

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[2] Petitioners have asserted that respondent has not submitted properly sworn materials in response to their motion. Indeed, respondent has failed to submit his declaration under penalty of perjury, as required to qualify his opposition as a sworn statement under RCW 9A.72.085. His factual statements are therefore not correctly submitted, and will not be given the weight of sworn statements. However, since the question presented is almost entirely based on legal issues, much of the analysis is not affected by this deficiency. Respondent's opposition regarding the law does not need to be submitted by sworn statement.

In analyzing the petitioners' requests, the court first turns to the statute, RCW Chapter 42.56.

The court's authority to consider the petitioners' requests flows from RCW 42.56.540, which states as follows:

> The examination of any specific public record may be enjoined if, upon motion and affidavit by an agency or its representative or a person who is named in the record or to whom the record specifically pertains, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions.

The Washington Supreme Court has made clear that this section does not confer substantive authority on the court, but rather sets a procedure for seeking relief as may be found in the statute. *Progressive Animal Welfare Society v. University of Washington,* 125 Wn.2d 243 (1994)("PAWS"); *Soter v. Cowles Publishing Co*., 162 Wn.2d 716 (2007).

In the PAWS case, an animal welfare society had requested a copy of an unfunded grant proposal from the University of Washington under the prior statute. On review of a trial court order, the Washington court analyzed the statute in detail, and concluded that it required "all state and local agencies to disclose any public record upon request, unless the record falls within certain very specific exemptions." *PAWS* at 250. That relatively bright line has been retained through the fourteen subsequent years of interpretation of Washington public-records law. The construction section of the current statute itself says:

> The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern. RCW 42.56.030.

In its most recent decision construing the Public Records Act, the court reiterated that the law "is a strongly worded mandate for broad disclosure of public records." *Soter.*

As a broad over-arching principle, "the public records act requires agencies to ignore the identity of the requester, and to focus on the information itself in determining whether it is exempt from disclosure." *King County v. Sheehan*, 114 Wn. App. 325, 357 (2002).

Because the petitioners have requested the court to rule on a number of specific requests submitted by respondent, the court addresses those first.

Petitioners have cited no specific exemption that would cover these requests, but rely on their arguments that respondent's requests are not made for a proper purpose under RCW ch. 42.56, that privacy interests are at stake, and that other superior courts have granted similar relief regarding respondent.[3]

This court is not bound by rulings made by other superior courts. One of the rulings, however, has been reviewed by the Court of Appeals. *Burt v. Department of Corrections,* 141 Wn. App. 573 (2007). In that case, Mr. Parmelee had, similar to the case at bar, specifically requested photographs, income, retirement and disability information, and administrative grievances or internal investigations concerning a number of DOC employees at the Washington State Penitentiary in Walla Walla, as well as a blanket request for documents concerning those employees. Mr. Parmelee was not a party, though he had sought intervention and been denied. The employees obtained an injunction on bases similar to those being urged by petitioners here, although, since Mr. Parmelee was not allowed to participate, there is no evidence of any opposition to the relief sought by the employees. Mr. Parmelee appealed, alleging that he should have been allowed to intervene, and that the employees' pleadings had been defective because they had not included their addresses (they were self-represented). These were the only bases for the appeal, and the trial court's ruling was upheld. The Court of Appeals for Division 3 was not asked to address the basis for the injunction and did not do so. Here, of course, Mr. Parmelee is a party, and has opposed the motion on substantive bases.[4]

Of the other superior court rulings, none have ordered relief of the breadth sought here.

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[3] These superior court rulings are set forth in Exhibits 4 – 8 to petitioner's motion for injunctive relief.

[4] Mr. Parmelee has also complained of procedural defects on the part of petitioners, specifically complaints that materials were not sent to him at DOC in the proper form, but he appears to have received all relevant documents, and the court finds that materials were properly sent to him.

With regard to the sheer volume of respondent's requests, they are indisputably voluminous, but that factor alone can not serve as a basis for granting the relief sought. In *Zink v. City of Mesa,* 140 Wn. App. 328 (2007), rev. den., 162 Wn.2d 1014 (2008), the requesters had made 172 requests to the city over a period of about 2 ½ years. The trial court ruled in favor of the city, finding, among other things, that it was a "practical impossibility" for the city to strictly comply with the Zinks' requests and that their public record requests "amounted to unlawful harassment." *Zink* at 741. On appeal, however, the trial court was reversed, with now-Justice Stephens noting that no specific exemptions to the statute had been cited by either the city or the trial court, and that the burden of proof is on the agency to establish the applicability of a statutory exemption. The court ruled that the Zinks' requests did not amount to unlawful harassment, but the opinion does not say whether the city would have been justified in withholding the requested information if the requirements of the unlawful harassment statute had been met.

Here, the court does not find sufficient evidence of unlawful harassment to affect its analysis. The *Zink* court looked to RCW 10.14.020 to define unlawful harassment: "a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose." Here, taking the petitioners' factual declarations as unopposed, the requests have certainly and justifiably "seriously alarmed" some of the persons about whom information has been requested, but the reasons advanced for there being no legitimate purpose for respondent's requests go solely to the identity of the requester.

The petitioners also argue that the requests fall within the privacy exemption. Exemption for private information is governed by the statute as follows:

> A person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these terms are used in this chapter, is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public. The provisions of this chapter dealing with the right to privacy in certain public records do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions from the public's right to inspect, examine, or copy public records.
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> RCW 42.56.050.

This section has been construed very narrowly. Balancing an individual's privacy interest against the public's interest in disclosure is not permitted (*Dawson v. Daly* at 795), and it is assumed that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others, *King County v. Sheehan*, 114 Wn. App. 325, 336 (2002). Here, petitioners have not specifically indicated what aspects of these public records would be highly offensive if requested by someone else, for example, a newspaper. Petitioners have also not indicated that the materials (except for identifying personnel records) are not those customarily released on request.

The requests for publicly held photographs, for example, do not fall within the privacy exemption. *Sheehan.* The blanket requests for personnel files do, however, fall within that exemption, *Dawson* at 789; *Smith v. Okanogan County*, 100 Wn. App. 7, 14 (2000), as do performance evaluations in personnel files, *Beltran v. DSHS*, 98 Wn. App. 245 (1999). A simple list of names, job title, and pay scales does not. *Sheehan.* State Bar numbers and work email addresses and office phone numbers are clearly public information that are not covered by the privacy exemption. Obviously, press releases and press clippings are not private information. Photographs and videos of individuals entering the courthouse through main entrances also do not fall within the privacy exemption, although similar material relating to use of secured facilities, such as certain underground parking facilities, would be exempt.[5]

Because, as noted above, petitioners have asked the court to deny respondent's specific requests based on their general request for a permanent injunction, the court will not review the requested material *in camera*. Injunctive relief as to specific requests numbered (1), (2), (6), (8), and (12) in petitioners' proposed order is denied. The requests in (3) through (5) are enjoined.[6] The roster requested in (7) should be produced if it exists, except that information beyond name, pay scale, and WSBA number may be redacted. The request in (9) should be supplied, except that cell phone and pager numbers may be redacted. No personal or home phone numbers need be supplied. Request number (10) should be supplied, except as to information that did not result in formal discipline or termination. Information in request

[5] RCW 42.56.420
[6] RCW 42.56.250.

number (11) should be granted as to the 3d and 4th Avenue entrances only. Material in request (13) regarding complaints or critical records should be produced, but material concerning the Judicial Conduct Commission is specifically exempted by CJCRP 11; the remainder of the material in this request is enjoined because it asks for material exempted by *Dawson v. Daly* and RCW 42.56.250...

The petitioners also requested the following relief:

> That respondent be permanently enjoined from submitting any additional public disclosure requests (whether submitted by himself, persons in privity with him, or persons otherwise acting on his behalf) to Petitioners in the future without prior leave of this Court. The Court will not provide leave unless Parmelee makes a substantial showing that release of the information or documents requested would serve the public interest and would not cause harm to any individuals or the Petitioners.

As noted above, the law is both clear and emphatic that analysis of accessibility to public records must focus on the information sought, not the identity of the person or entity seeking the information. The petitioners' motion, on the other hand, is exclusively focused on the identity of the respondent and the logical inferences that may be drawn from both who he is and what someone like him might do with such information. The petitioners ask the court to *assume* that because respondent is a violent, convicted felon who has a grudge against prosecutors and courts he will put requested materials to malign uses. This, they argue, would not be in the public interest, and therefore he should no longer be permitted to submit requests at all, unless he can make a substantial showing that release of the information to him – regardless of what the information is – serves the public interest. This extremely broad relief would reverse the burden specified by the statute. RCW 42.56.550. Moreover, the procedure they suggest would make the court the sole gatekeeper for public records requests, at least for Mr. Parmelee. Nothing in the statute or caselaw gives the court such power.

For the purposes of this motion, the court has, in fact, assumed that respondent's requests are inconvenient and that the uses to which the information will be put could be embarrassing and even alarming. Again, the legislature has explicitly made those considerations irrelevant. *Id.* Moreover, Division One of the

Washington Court of Appeals has already rejected an argument flowing from the requester's identity. *King County v. Sheehan*, 114 Wn. App. 325 (2002). In that case, Mr. Sheehan had requested full names and ranks of all King County police officers. That request was partially denied, and the County eventually sought injunctive relief. On appeal of the trial court ruling, Division One stated:

> We can conclude only that the requests of Sheehan and Rosenstein were denied because of who these men are--both operate controversial websites that are critical of police, and Sheehan, at least, has heretofore published home addresses of police officers on his website. Indeed, the trial court's order reflects that the decision to require the County to release only the surnames of its police officers was based in part on "William Sheehan's statements regarding his intended use of the information," as well as "balancing the interests of disclosure with the interests in effective law enforcement." But the act expressly states that "agencies shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request." RCW 42.17.270. Therefore, Sheehan's intended use of the information cannot be a basis for denying disclosure. To conclude otherwise would be to allow agencies to deny access to public records to its most vocal critics, while supplying the same information to its friends.

Sheehan at 341.

Here, the requester has been characterized as not only annoying or vocal, but violent. Even so, the law requires the court to presume that access to the public records he seeks is in the public interest, and not make him show his purpose. To do otherwise would, indeed, permit agencies to do just what the *Sheehan* court feared.

Accordingly, the permanent injunction prohibiting respondent from submitting public records requests without leave of court is denied.

Date: March 21, 2008

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JUDGE GLENNA S. HALL